## STATE OF NORTH DAKOTA COUNTY OF BURLEIGH

## BEFORE THE SECURITIES COMMISSIONER

In the Matter of BrokerageAmerica, Inc.	) CONSENT ORDER
Respondent	)

The North Dakota Securities Commissioner has advised the respondent, BrokerageAmerica, Inc., that the Commissioner is prepared to commence formal action pursuant to North Dakota Century Code Chapter 10-04 and has determined as follows:

- 1. BrokerageAmerica, Inc. is a securities dealer headquartered in New York and registered with the National Association of Securities Dealers and several states. BrokerageAmerica is not now and has never been registered as a dealer in North Dakota. BrokerageAmerica is primarily owned by Andrew Garrett, Inc., which is a securities dealer also headquartered in New York. Andrew Garrett, Inc. is not now and has never been registered as a dealer in North Dakota.
- 2. On or around June 5, 2001, the Commissioner received a dealer application from BrokerageAmerica, and the Commissioner began processing the application.
- 3. On or around June 28, 2001, and while their application was pending, BrokerageAmerica sent an email message to Doug Smith, a resident of North Dakota and an investigator with the Office of the Securities Commissioner, requesting that he become a client of BrokerageAmerica. Mr. Smith contacted BrokerageAmerica by telephone and requested the new client kit referenced in their email message. The kit, which was mailed to Mr. Smith at his home in North Dakota, contained the prospectus for a money market fund and all the forms necessary to set up an account.

- 4. Based on the above information, on July 23, 2001, the Commissioner issued a Cease and Desist Order against the Respondent. The Respondent received the Cease and Desist Order on or before July 30, 2001.
- On August 1, 2001, BrokerageAmerica approved the client applications of two North Dakota residents, one of which was sent an email message from BrokerageAmerica soliciting interest in the firm. On August 7, 2001, BrokerageAmerica approved the client applications of one additional North Dakota resident, who was also sent an email message from BrokerageAmerica soliciting interest in the firm. These actions were done in apparent violation of the terms of the Commissioner's Cease and Desist Order.
- 6. On October 8, 2001, BrokerageAmerica sent email messages to each of those North Dakota residents requesting them to fund their accounts. This action was done in apparent violation of the terms of the Commissioner's Cease and Desist Order.
- 7. Pursuant to section 10-04-10 N.D.C.C., no dealer may offer for sale or sell any securities within or from this state unless registered as a dealer, unless the securities are sold through exempt transactions under section 10-04-06 N.D.C.C.
- 8. Pursuant to section 10-04-16 N.D.C.C., when it shall appear to the Commissioner that any person has engaged in, or is engaging in, or is about to engage in any act or practice which is declared illegal in this chapter, the Commissioner may, in his discretion, issue any order and collect civil penalties against any person found in an administrative action to have violated any provision of the chapter in an amount not to exceed \$10,000 for each violation.

- 9. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against respondent pursuant to section 10-04-16 N.D.C.C.
- 10. Respondent acknowledges his right to a hearing on this matter and waives this right to a hearing and to present arguments to the Commissioner.
- Respondent agrees to resolve this matter with the Securities Commissioner by this
   Consent Order, and this is evidenced by the signature below.
- 12. The following Order is necessary and appropriate in the public interest.
  NOW, THEREFORE, IT IS ORDERED, THAT:
- Respondent shall not transact any securities business with any person in North
  Dakota unless respondents are registered as required by section 10-04-10
  N.D.C.C.
- 2. Respondent shall pay a civil penalty of \$5,000 to the Office of the Securities Commissioner pursuant to section 10-04-16 N.D.C.C.
- 3. Respondent shall withdraw its pending application as a dealer in North Dakota.
- 4. The Cease and Desist Order issued on August 7, 2001 is hereby vacated.
- 5. This Order shall be effective upon signature of the Commissioner.

Signed and Sealed this 2 day of October, 2001.

Karen J. Tyler, Securities Commissioner Office of the Securities Commissioner

State Capitol-5th Floor 600 East Boulevard Ave.

Bismarck, ND 58505-0510

(701) 328-2910

## STATE OF NORTH DAKOTA COUNTY OF BURLEIGH

## BEFORE THE SECURITIES COMMISSIONER

In the Matter of BrokerageAmerica, Inc. ) CONSENT TO ENTRY OF ORDER Respondent )	
I, the undersigned, state that I have read the foregoing Consent Order and that I know and fully understand its contents and effects. I further state that I am authorized to enter into this Consent Order on behalf of the respondent. I acknowledge that the respondent has waived its right to a hearing with respect to this matter, and that it consents to entry of the Consent Order by the Securities Commissioner.  I further acknowledge that the respondent has been afforded an opportunity to submit a mitigation statement in order to put the Consent Order into context, that it has done so, and that the respondent's mitigation statement will be included in its file along with the Consent Order.	
It is further expressly understood that the Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.	
Dated this 22 day of October, 2001.	
BrokerageAmerica, Inc. 425 Park Avenue, 22 <sup>nd</sup> Floor New York, NY 10022  By:  Andrew Sycott  (print name)	
Subscribed and Sworn before me this 22 day of October, 2001.  Schward  Notary Public	
State: New YORK County: New YORK My Commission Expires:  NOTARY PUBLIC, STATE OF NEW YORK  NO OF SCHOOLS OF NEW YORK  OUALIFIED IN QUEENS COUNTY  COMMISSION EXTHES NOVEMBER 33, 2008	